

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9549 of 1994

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

PATAN NAGARPALIKA

Versus

AMBALAL V PATEL

Appearance:

1. Special Civil Application No. 9549 of 1994
MR NV ANJARIA for Petitioner No. 1
MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 09/11/2004

ORAL JUDGEMENT

1. This petition under Article 227 of the Constitution of India is filed by the Patan Nagarpalika through its Chief Officer whereby the main contention is

raised to the effect that while exercising power under Section 36 A of the Industrial Disputes Act, 1947 the Labour Court gave explanation to the scope of original award and gave totally different interpretation of the original award.

2. The facts of the present case are that the respondent herein is a workman, working with Patan Nagarpalika and raised industrial disputes and the same was referred for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947 by the Assistant Labour Commissioner, Ahmedabad by order dated 2nd January, 1984. As per the grievance of the workman, as raised in the said demand, the respondent workman was entitled for reinstatement, backwages, and continuity of service since Patan Nagarpalika has flouted the provisions of Section 25 (F) of the Industrial Disputes Act.

3. Since the written statement was not filed by the Patan Nagarpalika in the said Reference, ex-parte award came to be passed by learned Presiding Officer, Labour Court, Ahmedabad on 28th January, 1986, directing the respondent Nagarpalika to reinstate the concerned workman Shri Ambalal V. Patel on his original post with continuity of service and to pay full backwages from 21st August, 1982 till reinstatement within a period of one month from the date of publication of the award and further to pay Rs.550=00 towards costs. It seems that Patan Nagarpalika petitioner herein, preferred Application No. 51 of 1986 for setting aside the award of the Court and subsequently, purshis came to be filed before the Labour Court agreeing that workman shall be paid salary as on 1st February, 1986 after calculating the annual increments which fell due from 20th June, 1978. As per the agreement/consent purshis dated 30th September, 1986, the Labour Court passed award in terms of the said consent purshis. Being aggrieved and dissatisfied by the aforesaid consent award, the petitioner preferred Special Civil Application No.1042/91 and this Court [Coram : A.P. Ravani & K.R. Vyas, JJ.] disposed of the said Special Civil Application by order dated 10th April, 1992 whereby it is observed as under :-

"The petitioner feels that as per the consent award he should be given benefits of continuity of service while it is the case of the respondent Nagarpalika that continuity of service is not agreed to by the Nagarpalika. The aforesaid controversy is required to be resolved by the Labour Court inasmuch as the difficulty has arisen as regards the correct interpretation of

the award. In view of this position, if the petitioner so feels may invoke the provisions of Section 36-A of the Industrial Disputes Act, 1947 and apply to the appropriate Government for removing the difficulty and doubts which according to him are required to be clarified. We hope and trust that if the petitioner applies to the appropriate Government for the aforesaid reliefs, the application will be considered expeditiously preferably before May 31, 1992.

Subject to the aforesaid observations, rejected.
Notice discharged."

3.1. In view of the aforesaid order, it was made clear that if the petitioner so feels, he may invoke provisions of Section 36-A of the Industrial Disputes Act, 1947 and apply to the appropriate Government for removing the difficulties and doubts which according to him are required to be clarified.

4. Accordingly, the workman preferred Statement of Claim dated 10th August, 1992, being Reference (L.C.A.) No. 1366/92, which is annexed at annexure-C to the petition and accordingly the statement of defence was also filed by Patan Nagarpalika on 19th October, 1993, whereby, it was specifically contended that as per the terms and conditions of purshis the petitioner was reinstated in service with effect from 1st December, 1986. According to the Patan Nagarpalika there was no confusion in the award and the petitioner was to be treated as junior clerk with effect from 1st December, 1986 only. The Patan Nagarpalika further contended that under Section 36-A of the Industrial Disputes Act, 1947 the Labour Court has limited jurisdiction and power and no further terms and conditions can be added or deleted and it is meant only for clarification, if any, which may be genuine according to Patan Nagarpalika. However, the Presiding Officer of Labour Court, Ahmedabad vide order dated 29th April, 1993 passed the order and in para 6 of the said award it was ordered that Patan Nagarpalika is duty bound to give continuity of service to the petitioner as junior clerk with effect from 23rd October, 1972 and accordingly, the workman should be given seniority and other benefits. The Labour Court has further held that action of the Patan Nagarpalika bypassing the petitioner in the seniority list of junior clerk is also illegal and, therefore, the workman should be given full effect of continuity of service with effect from 23rd October, 1972.

5. The present petition in the backdrop of aforementioned facts challenges the jurisdiction of the Labour Court, to make award and to pass the order under Section 36 (A) of the Industrial Disputes Act, 1947 since according to the petitioner, the Labour Court has exceeded the jurisdiction while passing the order dated 29th April, 1994 in Reference [L.C.A.] No. 1336/92 whereby, the respondent workman herein was granted continuity of service with effect from 23rd October, 1972 with consequential benefits which is nothing but undue, unjust interpretation of the earlier award dated 28th January, 1986, as modified by the order dated 30th September, 1986, pursuant to the consent purshis filed by both the parties.

6. According to the petitioner, the Labour Court has clearly exceeded the jurisdiction while exercising power under Section 36-A of the Industrial Disputes Act, 1947 inasmuch as the Labour Court was only required to interpret the award under Section 36-A and it is evident from the order dated 10th April, 1992 passed in Special Civil Application No.1042/91 by this Court wherein it is clearly stated that the workman can approach the concerned authority to remove the difficulties and doubts which according to workman are required to be clarified. So as per the submissions of learned advocate Shri Anjaria for Mr. S.N. Shelat appearing of Patan Nagarpalika explanation of granting continuity of service to the petitioner with effect from 23rd October, 1972 with consequential benefits, is not legal and within ambit of Section 36-A of the Industrial Disputes Act, 1947.

6.1. According to Shri Anjaria, the aforesaid order is beyond the jurisdiction of the Labour Court, Ahmedabad. However, while exercising power under Section 36-A of the Industrial Disputes Act, 1947 inasmuch as in the consent purshis which was filed on 30th September, 1986 by both the parties before the Labour Court, clearly envisaged reinstatement of workman with effect from 1st February, 1986. The interpretation of the original award while exercising power under Section 36-A of the Industrial Disputes Act, 1947 by the Labour Court is beyond the jurisdiction and any direction pursuant to such exercising power requires to be quash and set aside by this Court. Learned advocate Shri Anjaria has drawn my attention of the award of the Labour Court dated 29th April, 1994 and submitted that as per the date of the award as ordered in Reference No. 182/84, Patan Nagarpalika has reinstated the workman with effect from

1st February, 1986 and salary from 1st February, 1986 to 31st August, 1986 is already paid to the workman. Not only that pay fixation of the petitioner was already done as per the consent purshis where even yearly increment was considered with effect from 20th June, 1978.

7. Thus, according to the learned advocate for the petitioner no further interpretation could have been advanced or canvassed by the Labour Court beyond the term of the consent purshis while exercising power under Section 36-A of the Industrial Disputes Act, 1947. Learned advocate Shri Anjaria has also drawn my attention to the decision of the Apex Court reported in A.I.R. 1966 S.C. p.1903 more particularly, para 4 and 6 of the said decision whereby, certain observations have been made by the Supreme Court about the scope of Section 36-A of the Industrial Disputes Act, 1947. He, therefore, submitted that the interpretation enlarging the scope of the original award was beyond the jurisdiction of the Labour Court and, therefore, it is to be quashed and set aside.

7.1. Against the aforesaid arguments learned advocate for the respondents has submitted that the powers exercised by the Labour Court, under Section 36-A of the Industrial Disputes Act, 1947 is just and proper and no interference is required by this Court.

8. I have heard learned advocate for the respective parties and have also perused the evidence on record and various contentions and submissions made on the basis of the award of the Labour Court dated 28th January, 1986, consent purshis filed by the both the parties and subsequently direction given by this Court in Special Civil Application No. 1042/91 and thereafter second order passed in Reference [L.C.A.] No. 1336/92 dated 28th September, 1994. I am in complete agreement with the learned advocate for the petitioner inasmuch as the original award dated 28th January, 1986 passed in Reference No.182/1984 was nodoubt passed ex-parte came to be modified pursuant to the application made by the Patan Nagarpalika and on the consent purshis filed by both the parties. It is evident on the said consent purshis filed by both the parties, the workman was to be given reinstatement with effect from 1st February, 1986. It is further to be noted that the workman was to be given salary by considering yearly increment, with effect from 20th June, 1978 and thereafter, salary was to be paid accordingly. Patan Nagarpalika has complied with the consent purshis and it cannot be said that as per the said consent purshis intention of the parties was to give

continuity of service to the petitioner with effect from 23rd October, 1972 as interpreted by the Labour Court vide order dated 29th April, 1994 while exercising power under Section 36-A of the Industrial Disputes Act, 1947.

8.1. Accordingly, it is held that the Labour Court, Ahmedabad has exceeded its jurisdiction under Section 36-A of the Industrial Disputes Act while passing order dated 29th April, 1994 in Reference [L.C.A.] No. 1366/92 and the order of granting continuity of service to the workman with effect from 23rd October, 1992 and other benefits, are hereby quashed and set aside and the respondent workman herein is entitled for the service benefits as per the consent purshis filed on 30th September, 1986.

9. Accordingly, the petition is allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

[ANANT S. DAVE, J.]

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